

§ 1.4

entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.

(rrrr) *Swap execution facility*. This term means a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

(1) Facilitates the execution of swaps between persons; and

(2) Is not a designated contract market.

(ssss) *Trading facility*. This term has the meaning set forth in section 1a(51) of the Act.

[41 FR 3194, Jan. 21, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 1.4 Electronic signatures, acknowledgments and verifications.

For purposes of complying with any provision in the Commodity Exchange Act or the rules or regulations in this Chapter I that requires a swap transaction to be acknowledged by a swap dealer or major swap participant or a document to be signed or verified by a customer of a futures commission merchant or introducing broker, a retail forex customer of a retail foreign exchange dealer or futures commission merchant, a pool participant or a client of a commodity trading advisor, or a counterparty of a swap dealer or major swap participant, an electronic signature executed by the customer, retail forex customer, participant, client, counterparty, swap dealer, or major swap participant will be sufficient, if the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity pool operator, commodity trading advisor, swap dealer, or major swap participant elects generally to accept electronic signatures, acknowledgments or verifications or another Commission rule permits the use of electronic signatures for the purposes listed above; *Provided, however*, That the electronic signature must comply with applicable

17 CFR Ch. I (4–1–16 Edition)

Federal laws and other Commission rules; And, *Provided further*, That the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity pool operator, commodity trading advisor, swap dealer, or major swap participant must adopt and use reasonable safeguards regarding the use of electronic signatures, including at a minimum safeguards employed to prevent alteration of the electronic record with which the electronic signature is associated, after such record has been electronically signed.

[77 FR 66320, Nov. 2, 2012]

§ 1.6 Anti-evasion.

(a) It shall be unlawful to conduct activities outside the United States, including entering into agreements, contracts, and transactions and structuring entities, to willfully evade or attempt to evade any provision of the Commodity Exchange Act as enacted by Subtitle A of the Wall Street Transparency and Accountability Act of 2010 or the rules, regulations, and orders of the Commission promulgated thereunder (*Subtitle A*).

(b) The form, label, and written documentation of an agreement, contract, or transaction, or an entity, shall not be dispositive in determining whether the agreement, contract, or transaction, or entity, has been entered into or structured to willfully evade as provided in paragraph (a) of this section.

(c) An activity conducted outside the United States to evade as provided in paragraph (a) of this section shall be subject to the provisions of Subtitle A.

(d) Notwithstanding the foregoing, no agreement, contract, or transaction structured as a security (including a security-based swap) under the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))) shall be deemed a swap pursuant to this section.

[77 FR 48354, Aug. 13, 2012]

§ 1.7 Books and records requirements for security-based swap agreements.

(a) A person registered as a swap data repository under section 21 of the Commodity Exchange Act and the rules and regulations thereunder:

Commodity Futures Trading Commission

§ 1.8

(1) Shall not be required to keep and maintain additional books and records regarding security-based swap agreements other than the books and records regarding swaps required to be kept and maintained pursuant to section 21 of the Commodity Exchange Act and the rules and regulations thereunder; and

(2) Shall not be required to collect and maintain additional data regarding security-based swap agreements other than the data regarding swaps required to be collected and maintained by such persons pursuant to section 21 of the Commodity Exchange Act and the rules and regulations thereunder.

(b) A person shall not be required to keep and maintain additional books and records, including daily trading records, regarding security-based swap agreements other than the books and records regarding swaps required to be kept and maintained by such persons pursuant to section 4s of the Commodity Exchange Act and the rules and regulations thereunder if such person is registered as:

(1) A swap dealer under section 4s(a)(1) of the Commodity Exchange Act and the rules and regulations thereunder;

(2) A major swap participant under section 4s(a)(2) of the Commodity Exchange Act and the rules and regulations thereunder;

(3) A security-based swap dealer under section 15F(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-10(a)(1)) and the rules and regulations thereunder; or

(4) a major security-based swap participant under section 15F(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-10(a)(2)) and the rules and regulations thereunder.

(c) The term *security-based swap agreement* has the meaning set forth in section 1a(47)(A)(v) of the Commodity Exchange Act.

[77 FR 48354, Aug. 13, 2012]

§ 1.8 Requests for interpretation of swaps, security-based swaps, and mixed swaps.

(a) *In general.* Any person may submit a request to the Commission and the Securities and Exchange Commission to provide a joint interpretation of

whether a particular agreement, contract, or transaction (or class thereof) is:

(1) A swap, as that term is defined in section 1a(47) of the Commodity Exchange Act and the rules and regulations promulgated thereunder;

(2) A security-based swap, as that term is defined in section 1a(42) of the Commodity Exchange Act and the rules and regulations promulgated thereunder; or

(3) A mixed swap, as that term is defined in section 1a(47)(D) of the Commodity Exchange Act and the rules and regulations promulgated thereunder.

(b) *Request process.* In making a request pursuant to paragraph (a) of this section, the requesting person must provide the Commission and the Securities and Exchange Commission with the following:

(1) All material information regarding the terms of the agreement, contract, or transaction (or class thereof);

(2) A statement of the economic characteristics and purpose of the agreement, contract, or transaction (or class thereof);

(3) The requesting person's determination as to whether the agreement, contract, or transaction (or class thereof) should be characterized as a swap, a security-based swap, or both, (*i.e.*, a mixed swap), including the basis for such determination; and

(4) Such other information as may be requested by the Commission or the Securities and Exchange Commission.

(c) *Request withdrawal.* A person may withdraw a request made pursuant to paragraph (a) of this section at any time prior to the issuance of a joint interpretation or joint proposed rule by the Commission and the Securities and Exchange Commission in response to the request; provided, however, that notwithstanding such withdrawal, the Commission and the Securities and Exchange Commission may provide a joint interpretation of whether the agreement, contract, or transaction (or class thereof) is a swap, a security-based swap, or both (*i.e.*, a mixed swap).

(d) *Request by the Commission or the Securities and Exchange Commission.* In the absence of a request for a joint interpretation under paragraph (a) of this section: